

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600**

<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

Case No. A-6082

PETITION OF LISA VOGEL AND ARTHUR HONDROS

(Hearings held July 20 and July 27, 2005)

OPINION OF THE BOARD

(Effective date of Opinion, September 9, 2005)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.323(a). The petitioners propose the construction of a one-story addition that requires a 7.67 foot variance as it is within twenty-four (24) feet of the established front building line. The required established building line is 31.67 feet.

The subject property is Lots 12 and 13, Block 12, Pinecrest Subdivision, located at 6516 Allegheny Avenue, Takoma Park, Maryland, 20912, in the R-60 Zone (Tax Account No. 03177348).

Decision of the Board: Requested variance **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose the construction of an 11 x 4 foot one-story addition.
2. The petitioners testified that the subject property has a publicly-constructed storm drain, which starts in the western side yard, cuts through the property and exits through the front yard. The petitioners testified that only one other property in the neighborhood shares this condition and that property is located one street over on Cockerille Avenue [Lot 20, Block 13]. See, Exhibit Nos. 9(a) [zoning vicinity map] and 9(b) [engineering map—City of Takoma Park Public Works].
3. The petitioners testified that the storm drain prevents any new construction in the rear or side yards and that they were notified by the City of Takoma Park that, in addition, new construction is not permitted within 15 feet of the storm drain. The petitioners testified that they were informed by the prior owners that the property has an easement for the storm drain, but that they have been unable to locate any

information on the storm drain in either the County's or the City of Takoma Park's public records.

4. The petitioners testified that the new construction includes the renovation of the kitchen and a covered porch. The petitioners testified that the existing covered porch extends across a portion of the front of the house and that the new porch would extend across the entire length of the front of the house. The petitioners testified that the existing house is currently located two feet in the front yard setback and that the requested variance is for the portion of the house located in the setback.
5. In response to a request by the Board, the record contains a memorandum from the Department of Permitting Services, which states "This is to inform you and the Board of Appeals that the Department of Permitting Services does not (sic) object to the proposed 9' covered unenclosed porch We also do not require that a variance be obtained for said covered unenclosed porch. I've consulted with our in-house counsel Mac Spicer regarding this matter and concluded that if the room addition were not proposed as a subject of this petition that the porch would still be entitled to the exemption allowed in accordance with Section 59-B-3.1(d)."

FINDINGS OF THE BOARD

Based on the petitioners' binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The petitioners' property is made up of Lots 12 and 13. The subject property has a storm drain that is located in the western side yard of Lot 12, extends across Lot 12 to the center of Lot 13, and exits through the center of Lot 13. The existence of the storm drain creates a very shallow lot that has a severely limited buildable envelope. The existing dwelling is currently located in the front yard setback. The Board finds that these are extraordinary conditions peculiar to the petitioners' property and that the strict application of the zoning regulations would result in practical difficulty to and an undue hardship upon the property owners.

(b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.

The Board finds that the variance request for the construction of a one-story addition is the minimum reasonably necessary.

(c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.

The Board finds that the proposed construction will continue the residential use of the property and that the variance will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

(d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.

The Board finds that the proposed construction will not materially change the view of the house and that the variance will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variance of 7.67 feet from the required 31.67 foot established front building line for the construction of a one-story addition is granted subject to the following conditions:

1. The petitioners shall be bound by all of their testimony and exhibits of record, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4 and 5(a) and 5(i).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Angelo M. Caputo, seconded by Wendell M. Holloway, with Donna L. Barron, Louise L. Mayer and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the foregoing Resolution.

Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 9th day of September, 2005.

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.